

Superior Court of Justice, Divisional Court

COURT FILE NUMBER: DC-11-1759/DC-11-1760

Children's Aid Society of Ottawa

Respondent

And

Sophie Normand-Denis

Appellant

NOTICE OF CONSTITUTIONAL QUESTION

The *appellant party Sophie Normand-Denis* intends to question the constitutional validity or applicability of *Family Law Rules and the Child and Family Services Act* and to claim a remedy under subsection 24 (1) of the *Canadian Charter of Rights and Freedoms* in relation to an act or omission of the Government of Canada and Ontario.

SECTION I

The questions to be argued on (day), (date), at (time), at 161 Elgin, Ottawa, Ontario, Superior Court of Justice, Divisional Court at the time of the appeals of the court decisions awarding Crown wardship of Anthony Normand and Angelina Normand to the Children's Aid Society of Ottawa without access to their mother Sophie Normand-Denis.

Does section 40 (1) to (14) of the Child and Family Services Act of Ontario violate section 91(27) of the Constitutional Act of Canada (CAC) and therefore section 7, 11(d) and 15 of the Charter Rights and Freedoms and therefore have no force or effect of law pursuant to section 52 (1) of the Constitution Act of Canada?

Did the Government of Canada, the Government of Ontario and the Children's Aid Society of Ottawa (CAS) violate section 7, 11(d) and 15 charter rights of Sophie Normand-Denis by removing her children from her permanently without the application of principles of fundamental justice thus causing Sophie and her children Angelina and Anthony grave harm?

Did the Government of Canada, the Government of Ontario and the Children's Aid Society of Ottawa (CAS) violate section 7, 11(d) and 15 charter rights of Angelina and Anthony Normand by removing them from their mother Sophie Normand-Denis permanently without the application of fundamental justice thus causing Sophie and her children Angelina and Anthony grave harm?

Is it a violation of a parent's section 15 right to protection from discrimination based on age if their child is removed from them at birth because they are a teen parent especially if the parent was once in the care of the Children's Aid Society themselves?

Is it a violation of a child's section 15 right to protection from discrimination based on age if their parent is removed from them at birth because they are a teen parent especially if the parent was once in the care of the Children's Aid Society themselves?

Is it a violation of a parent's section 7 rights to security of the person if their child is removed from them at birth because they are a teen mother especially if the parent was once in the care of the Children's Aid Society themselves?

Is it a violation of a child's section 7 rights to security of the person if they are separated from their parents by the state because the parent is a teen especially if the parent was once in the care of the Children's Aid Society themselves.

SECTION II

The Following are the material facts giving rise to the constitutional question:

1. Sophie is a 20-year-old French speaking Metis woman. In spite of the tremendous battle she has been forced to undertake to get her children back from the Children's Aid Society of Ottawa she remains passionately resolute and steadfastly optimistic in her efforts to have her children returned to her.
2. She believes in God and trusts that if she continues to make responsible decisions based on what she believes is right her children will be returned to her. Her faith is keeping her strong. And her faith and optimism are helping her to gain support from child advocates and activists across the country.

3. She understands that what has been done to her is morally wrong and also illegal. She has filed an appeal of the decisions to place her children permanently with the CAS and she is also herein stating the cause for a constitutional challenge of the Child and Family Services Act of Ontario as ultra vires i.e. unconstitutional.
4. On July 15, 2011 the Superior court of Justice issued a decision for permanent crown wardship of Anthony Normand with no access to his mother Sophie Normand-Denis based on a judicial process in Superior Court of Justice, Family Division that is based on the balance of probabilities under the Child and Family Services Act of Ontario.
5. On August 16, 2011 the Superior court of Justice issued a decision for permanent crown wardship of Angelina Normand with no access to her mother Sophie Normand-Denis based on a judicial process in Superior Court of Justice, Family Division that is based on the balance of probabilities under the Child and Family Services Act of Ontario.
6. Sophie did not neglect or harm or fail to protect her children in any way.

SOPHIE'S Background

7. Sophie Normand-Denis mother died of cancer after a slow tragic decline before death when Sophie was 12 years old.
8. Cecile was a wonderful mother to Sophie. She provided positive consistent loving care to Sophie throughout her formative years. Sophie has fond memories of her mother and believes that she is watching over and helping her feel strong in the face of this tremendous adversity with the CAS and the courts.
9. After Cecile died Sophie went to live with Cecile but her brother was placed in the Department of Youth Protection in Quebec.
10. The aunt spent a great deal of the money left for Sophie on renovations to her house. When the renovations were complete Sophie was placed in the CAS by her Joslyn.
 - a. During the time that Sophie was in the care of her aunt Joslyn Said
 - b. Joslyn did not provide any bereavement counseling for Sophie
 - c. Sophie was abused by her aunt
 - d. and her aunt sent her to stay for a week with a man named Michelle Leonard who raped her several times at age 12. Sophie told her aunt about this and the response was to call the man and ask him did you do this to Sophie and the Michelle Leonard answered no I did not. Therefore the aunt advised Sophie that she

did not believe her and sought no help for her to deal with this.

11. In May 2011 Melanie Rochon called Sophie to her office for an interview which Sophie has captured on tape. Melanie says to Sophie we contacted your Aunt Joslyn on facebook and asked her to do a plan of care for Anthony. Your aunt was very disappointed to learn that you had a child says Melanie. Then Melanie asks Sophie what she thinks of Anthony being adopted by Joslyn. Sophie said she would have to think about it and Melanie says well it does not matter what you think about it we are moving forward with this anyway.
12. At age 14 when the money Sophie's mother left for her was spent her aunt placed her with the CAS.
13. Sophie stayed in the care of the CAS from age 13 to 16.
14. During this time she had assessments done that indicated that she needed counseling to help her deal with the death of her mother and speech therapy but none was provided.
15. Sophie ran away from CAS dozens of times before she left the CAS at age 16.
16. At 15 years old she was placed by CAS in an Anglophone foster home where she was treated unfairly. On one occasion Sophie was upset for being punished for something she did not do. An argument resulted with the foster mother who reacted by executing a physical restraint as punishment. The restraint was not properly executed and Sophie was being hurt. Sophie warned several times that she was being hurt then finally lashed out with a bite. Police were called Sophie was charged and later convicted of assault.
17. The court found Sophie guilty and ordered that Sophie should receive anger management, which she did from Ken Leprade. Leprade worked with Sophie for one year and wrote a report indicated that he did not believe she had an anger management problem but rather at the time of the incident she was charged with she was reacting to adverse conditions. Sophie tried to submit this report to the court as an attachment to an affidavit and the judge would not accept it.
18. Sophie emancipated herself from CAS at 16 years of age and was taken in by a couple in Brockville.
19. Sophie benefited greatly from the time she spent with this couple in Brockville and they still play a supportive role in her life. Sophie was a very sad discouraged person when she went to live with this couple. Their love

and support nurtured her and increased her confidence and happiness.

20. At age 18 Sophie gave birth to her first child Anthony Normand at the Ottawa General Hospital. When Sophie found out she was pregnant she took prenatal courses and got an obstetrician named Dr. Fleming.
21. Dr. Fleming coincidentally arrived to visit Sophie in General Hospital April 7, 2010 the day after Anthony was born while the CAS was there to apprehend him. Dr. Fleming advised the CAS during the time of apprehension of Anthony April 7, 2010 and again in writing afterwards that Sophie took responsible care of herself during pregnancy no drugs or alcohol, good nutrition, vitamins etc. and met all her prenatal appointments and recommended that she be allowed to keep her child with access to community resources. Sophie tried to submit this report at trial with her affidavit but the judge would not allow it.
22. Sophie also was able to secure a 3 bedroom subsidized townhouse through Ottawa Community Housing. She found furniture for the home and acquired all the furniture, equipment and supplies she need for the baby when it arrived. Friends would tease her that she found enough clothing for the baby until he was 88 years old. She even saved her money and bought a brand new crib and a mobile for the baby. She bought a change table, dresser and many toys and books. Sophie's friend Roger Morin helped her to acquire these things to prepare for the baby. Roger was her 42-year-old platonic friend who helped Sophie out financially. Roger has a Mild Intellectual Disability so their friendship was symbiotic. Roger helped her with resources and Sophie helped Roger by helping to guide his decisions that were often lacking because of his MID condition.

APPREHENSION OF HER FIRST BORN CHILD ANTHONY IN HOSPITAL AT BIRTH.

23. Sophie's first child Anthony Normand was apprehended in Ottawa Hospital General Campus without warrant because CAS claimed Roger Morin was a pedophile. Roger has never been accused, charged or convicted of being a pedophile. Roger was labeled as a pedophile by the CAS based on a penile plethysmograph test that was done on him by Dr. Bradford of the Royal Ottawa Hospital when he was a teenager.
24. At the time of Anthony's CAS apprehension Roger said he was never accused or charged of molesting children or hurting children in any way. And to help clear this up he signed a consent form for the CAS to check his police record. Sophie advised CAS that she did not know that Roger was accused by CAS of being a pedophile so she advised that she would

- stop contact with Roger until everything was cleared up.
25. After advising that the society had concerns about Roger Morin Michelle Thorn said she was going to get direction from her manger.
26. When Michelle Thorn came back she said they were going to apprehend Anthony because they have evidence that Roger is a pedophile.
27. When Michelle Thorn announced that they were going to apprehend Sophie's baby because Roger is a pedophile Jane Scharf said to Michelle Thorn (CAS worker) why are you going to apprehend since Sophie said she would disassociate with Roger until the matter was cleared up. Michelle Thorn added well we have concerns about Sophie also. When asked what those concerns were she said.
- Sophie had sex with two boys in a foster home.
 - Sophie lived with a teacher. This teacher was a foster parent approved by CAS and who received financial payments by CAS. The relationship was that of foster parent and foster child nothing improper
 - That while Sophie was in care she was diagnosed with Adolescent Conduct disorder because she bite a foster home mother, which is explained in paragraph 15 and 16 above.
28. It was not until Sophie was served with the application for crown warship of her children that they mention their claim that Sophie was Mildly Intellectually Retarded but they did not give any proof then at any time after including a refusal at trial.
29. Sophie asked to speak with Jane Scharf her advocate privately. Sophie and Jane went to the other end of the double hospital room. Jane called a lawyer to try and find out what Sophie's rights were and what was going to happen. After five minutes the CAS worker Michelle Thorn and 2 hospital staff started advancing towards them saying they were going to take the child now with the assistance of hospital security if necessary if Sophie did not turn the child over.
30. Jane said to them don't you dare take that child until Sophie has a chance to talk to a lawyer first. Jane said Sophie has a right to speak with a lawyer on such a serious matter as the apprehension of her child. Jane also stated that they did not give good reasons to take the baby nor have they shown that they have the legal rights to take the baby. Michelle Thorn held up her nametag and said this is my authority to take the baby. Jane said what is the legal basis for this authority. Thorn said I don't walk around with the legislation. Jane said have your office fax you the relevant parts. This was not done but the three approaching persons did retreat for

another 15 minutes, which did give Sophie a chance to talk to a lawyer who told her what the process would be. This opportunity made a world of difference for Sophie was terrified by what was happening to her child. The baby was taken to the nursery where Sophie was allowed to spend her time with the baby until April 9, 2011 when CAS took the baby from the nursery. Later In Michelle Thorn's affidavit she mocked Jane for stated that Sophie has a right to talk to a lawyer.

31. Sophie did stop contact with Roger and a friend of hers Joshua Cohen investigated the allegations about Roger for her.
32. Josh learned from police records that Roger was never accused of sexually molesting children or hurting children in any way. Josh also confirmed this with Roger's Royal Ottawa Hospital file, which states in 2008 that Roger was labeled a pedophile based on the penile plethysmograph test he received in 1986 but there was no evidence that he ever acted on it.
33. Josh also uncovered a decision made by an international group of forensic psychiatrists in 2005 Dr. Bradford being one of them that this penile plethysmograph test was not reliable when given to persons with intellectual disability. And Josh also found that the courts in Canada and the US have deemed this penile plethysmograph to be of no evidentiary value in proving someone is a sex offender. Recently the British Columbia Supreme Court recommended to the BC government that they abandon this testing because it has no scientific value and it infringes charter rights. The BC government announced last year they were going to abandoned the use of this testing. The trial judge would not allow Joshua to testify and would not consider his affidavits and exhibits in this matter. This judge said this evidence was not relevant because the application from CAS was not based on matters related to Roger Morin. (The application did check off failed to protect from sexual abuse. The apprehension without warrant was because of Roger. And the CAS submitted a court decision in Rogers's case where they apprehended his children (without ever having given Sophie a copy of this decision).
34. CAS also accuses Sophie in their application to get permanent custody of her child of being "Mildly Intellectually Retarded" based on an assessment she received by Children's Hospital of Eastern Ontario when she was in the care of the CAS herself. The CAS would not produce this document during discovery and the judge would not order the CAS to produce this document at trial. Sophie tried to give as evidence to refute MID assessment her high school transcripts which showed good marks for all of grade 9, part of grade 10 and one grade 11 class in regular high school programming. And her certificate from May 2011 from the Canadian Red

Cross for a 6-hour third level infant and adult CPR/Defibulator course in which she got 100%. Sophie properly submitted these documents attached to her affidavit to the CAS and court before trial. The judge would not consider this evidence.

35. As well Sophie had no exposure to English until she was sixteen and she speaks English fluently now. And she was unable to read and write English a year ago and she self represented in English which meant she had to compose and read the questions to the witnesses at court. She had no assistance in court. These accomplishments prove she is not MID and provide sufficient proof, which was discounted by the court. Jane Scharf testified to Sophie's advancement in English over the previous year and the Judge tried to aggressively mischaracterized what she was saying to discredit the testimony. Jane testified that she had met Sophie a little over a year before. Jane said when she met Sophie she was having a little difficulty speaking English but now she speaks fluently. And that one year ago she could not read or write English now she reads and writes English with a little difficulty. The Judge tried to re-characterize her statement as having said she could not speak English a year ago and now she can read and write English perfectly. Jane insisted that her statement be captured properly in spite of the Judge trying to yell over her with his re-characterization of what she said. Jane insisted that the judge check the record because that is not what she said and the judge ended up conceding. Jane also pointed out that Sophie read the questions for the witness in English all through the trial without any assistance giving evidence to what Jane was saying. The judge showed anger to this statement.

36. The CAS requested Sophie to undergo a psychological assessment, which she agreed to do. She agreed to and cooperated with a psychological assessment by Dr. Worenklien and he recommended against crown wardship even in spite of all the miss information that the CAS provided to him. On March 1, 2011 he recommended against crown wardship and instead recommended additional community parenting courses and infant stimulation classes from the CAS. He also recommended a 6-month extension past the 1-year mark and a reassessment by himself after that time. Sophie did undertake several parenting courses and an infant stimulation class after March 1, 2011 in addition to the ones she took in 2010 from the community but CAS refused to provide infant stimulation as recommended. But then at court the Doctor changed his recommended to crown wardship without reassessing Sophie as he recommended. Sophie was not advised before court that the Doctor had changed his recommendation. On cross Sophie got the Doctor to admit CAS had told him that she did not take any parenting courses. The judge would not allow Sophie to recall herself to counter this new

evidence from the Doctor. Sophie did cooperate fully with acquiring additional community parenting and infant stimulation since the Doctor issued his recommendations March 1, 2011 but the judge would not consider her certificates and letters of recommendation to prove this. The CAS neglected to provide the Doctors March 1, 2011 letter at trial and the Judge would not accept this letter from Sophie's affidavit exhibit attachment.

37. The state permanently removed Sophie's child Anthony from her with no access.
 - a. Without making it clear to her what she was suppose to have done to harm her children.
 - b. Without evidence that she harmed her children
 - c. Without giving her a full chance to defend herself
 - d. By the use of a courts system that do not require a high burden of proof before permanent apprehension of her children is ordered by the court
38. Sophie was treated arbitrarily by the CAS and did not receive a fair trial by the courts.
39. Sophie cannot afford a transcript of the trial and Legal Aid has refused to pay for it and if she cannot get the court to pay for the transcript she will have to rely on her own tape recordings of the court proceedings if CAS or the court denies what happened to her procedurally in court.
40. During this time Sophie was being supervised by the CAS she received abusive treatment from CAS workers and they made many false statements about her and placed them on her file and she was not able to get any intervention by the province to resolve these matters and CAS refused to provide Internal Review Panel. These matters of mistreatment were supposed to be dealt with at trial but the trial judge refused to allow it.
41. During the year that Sophie son Anthony was in care she cooperated fully and meet all requirements for parenting courses and infant stimulation and CPR course as well she maintained an orderly safe home and managed visits without neglecting or hurting Anthony in any way. She provided everything he needed in an appropriate well managed safe home, food, clothing, supplies, toys and furniture. Evidence she provided to support this statement were refused by the judge at trial. Proof included videotapes or her home and audiotapes her visits with her child in her home.
42. At trial the judge invited Sophie on the stand to tell her side of the story

after he kicked her witness Josh of the stand without letting him testify and her support person Sue Clark out of the courtroom. She cooperated with this invitation and this is why all her affidavit evidence and exhibits were disqualified.

43. The judge did not warn her that cooperating with his request would invalidate all her evidence. And he would not let her recall herself to enter her exhibits once she did find out the next day.
44. He refused to order the CAS to provide her juvenile file, which contained the psychological assessment they were relying on to support their claim that Sophie was "retarded" (term used by the CAS), and neither CAS nor the court would give Sophie a copy of the CAS court decision on Roger Morin that CAS entered as exhibit 1,
45. The CAS was making a case that she failed to protect her child because her friend was a pedophile even though she had no contact with Roger Morin from April 7, 2010 until present and the CAS confirmed in court June 29, 2011 that she had no contact with him.
46. And the CAS also made the false case that Sophie is mildly intellectually retarded (they use the term currently retarded.) The proper term is Mild Intellectual Disability or MID. They made this case by referring to a medical report in her juvenile file. The CAS refused to provide Sophie with her juvenile file or the medical report they were referring to either before trial upon request in writing or during trial. Nor would the judge on request by Sophie compel the CAS to provide this assessment they were relying on request in court.
47. At trial no evidence was brought that she hurt or neglected her child or failed to protect them or any other child. And she was left without any evidence to support her case because of the actions of the judge to have custody of her child back. The presentation of the CAS was that she failed to protect her child from sexual harm (Roger Morin) and she might hurt them in the future because she was she was mentally deficient.

SOPHIE'S SECOND CHILD APPREHENDED AT BIRTH

48. Sophie had another child Angelina Normand on June 22, 2011 who was born with a heart defect that needed an operation. The child's chances of living were less than 25% at birth. CAS apprehended her at birth (with a warrant this time that said removing a child from a place of danger to a place of safety) and blocked Sophie from access to the child without providing someone to replace her to provide the child with maternal contact with the child in hospital. Sophie applied for a court order to visit

the child more frequently.

49. Sophie, Jane Scharf and Josh Cohen meet with CHEO communications worker Ms. Currie just after CAS instructed CHEO to block Sophie from access with Angelina. Sophie told Ms. Currie she was afraid of what would happen to Angelina if no one spent time with her to comfort her. Sophie explained that just after she was born after she was examined by the doctors and Sophie was aloud to see her Angelina was crying hard. Sophie spoke softly to Angelina and strocked her face. Angelina grabbed on to Sophie's finger and soon relaxed and went to slept. The attending nurse commented on how loving Sophie was with the baby.
50. Ms. Currie said she was sorry but the hospital does not provide this kind of contact with the child as the do not have enough staff to do this. She said CAS sometimes offers this kind of support so she would ask if they would provide it.
51. CAS did not provide anyone to support Angelina until the foster parents of Anthony decided to foster Angelina also. The foster mother would come in on the day during the week when Sophie was not permitted a visit with Angelina.
52. Sophie motioned the judge when the matter first went to court for additions visits because she was worried about the harm that would be caused if Angelina did not have enough maternal contact. The court added one more ordered CAS visit per week and also ordered that Sophie could see the child any time Children's Hospital of Eastern Ontario (CHEO) staff was present to supervise. When Sophie tried to visit in the neonatal unit which is heavily staffed and highly secured unit CHEO staff advised Sophie they would not accept the court order because they "take their direction from CAS who have instructed that Sophie not be permitted access when CAS is not there". Sophie has this on tape.
53. On July 1, 2011 Angelina received an open-heart operation that was successful. On July 9, 2011 Sophie learned that no one was there from CAS to visit the child. Therefore no one was there to provide maternal contact to the child. Sophie asked hospital staff if she could visit the child as per the court order and the answer again was no because CAS has instructed that there be no access to Sophie.
54. On July 10, 2011 Sophie was told that Angelina had gone into medical crisis on July 9, 2011. Sophie also learned on July 10, 2011 that no one was in to visit Angelina and Sophie again asked if she could visit but was refused.
55. CAS staff confirmed that no one visited the child that weekend and

explained that it was because the foster parents went away for the weekend. CAS denied that the lack of maternal contact could have caused or contributed to her critical medical condition. Research shows lack of maternal contact causes medical distress up to and including death, adversely effects psychological development and can even cause a condition called failure to thrive. CAS refused to commit to provide at least a minimum of 1.5 hours maternal contact per day. Sophie has it on tape the CAS confirming there was no maternal contact the weekend the child went into critical condition and that they would not commit to a minimum amount of maternal contact for the child either with Sophie or a substitute person.

56. Sophie was very concerned that Angelina's psychological and physical health would be compromised if a minimum of maternal contact was not provided. The following weekend Sophie learned that no one came to visit Angelina again on July 16, 2010. Sophie asked CHEO staff again to visit Angelina and was permitted to visit for 5 minutes. When she asked to see her longer she was told that CAS said she was not aloud contact unless CAS is present.
57. Sophie called her friend Jane Scharf to help her with this problem because she was terrified that the baby would have medical problems again if no one came to visit her. Jane arrived at the hospital about 6:00 P.M. on July 16, 2011. When Jane arrived Sophie from the outside parking lot placed a call to CHEO staff to ask again for a visit with Angelina. Staff left Sophie on hold for about ½ hour after which time they came back on the phone and stated that they had phoned CAS and CAS had advised them that they were not to give Sophie a visit with Angelina.
58. Sophie and her friend Jane Scharf called 911 and two officers D. Dornellas and M. Lacroix responded to the call. The police incident report # is 11-207956. Sophie showed them her court order allowing access to Angelina. Officer Lacroix said they do not usually enforce court orders but they called it in for permission and acquired permission to attempt to enforce this order. The two officers went in to speak with CHEO staff and came out and said to Sophie CHEO staff called CAS and CAS refused to allow Sophie to visit. The officers were respectful and supportive but ultimately unsuccessful. And they did agree that if a parent had their child in CHEO in critical condition and did not visit for two days CAS would be called in.
59. On July 11, 2011 Sophie made a motion to get an order to enforce the court order that was to be heard on August 5, 2011 at the Care and Custody Hearing for Angelina Normand. Sophie resubmitted her affidavits and evidence that the trial judge refused to consider before making his decision for crown wardship of Anthony Normand. Justice Pargett refused

to consider this evidence in her deliberations. As well she did not address the matter of breach of court order motion and rather only dealt with the motion for a summary judgment by CAS for the permanent wardship of Angelina. Justice issued a decision that there will be decision for crown wardship of Angelina without access.

60. Not only were Sophie's children arbitrarily removed from her but Sophie was subject to mistreatment by CAS workers which included breaches of confidence, pressure to permit disclosure of her file to members of the community and misinformation being put on her file that the CAS refused to correct. The CAS refused to deal with these matters under the internal panel review. Sophie complained to the Child and Family Review Board, the Office of the Ombudsman, the Office of the Child Advocate, the municipal and provincial police, the Office of the Coroner, the Mayor Larry O'Brien and her MPP Madeleine Meilleur and her MP Mauril Belanger without results. No government oversight exists to deal with these matters and the trial judge refused to deal with these matters even though they were included in the list of issues for trial undisputed by the CAS or the courts at the pretrial hearing.
61. Also the CAS staff put false information in their affidavits for trial, which they knew to be false. For example the main caseworker Melanie Rochon swore that she had no knowledge that Sophie took any parenting courses up until the time she wrote the affidavit in June 2011 except for the infant stimulation program from CAS she took in Sept and Dec of 2010. Michelle Thorn CAS worker was advised on April 12, 2010 that Sophie was enrolled in 2 parenting programs. Sophie advised Melanie Rochon in a meeting in May 2010 that she was taking these 2 courses. This was in a meeting that Sophie has a tape recording of and it was also witnessed by Jane Scharf. And Sophie submitted certificates from these programs for court in June 29 2010, which Melonie attended. Sophie took these two courses of her own initiative. The certificates for these courses were submitted as affidavit exhibits to the CAS in June 29 2010. The CAS worker Melanie Rochon also swore in her affidavit that Sophie was instructed to take a CPR course but failed to do so. Sophie had taken the CPR course in May 2011, which the CAS enrolled her in and paid for, and she got 100% on the testing of this 3rd level 6-hour CPR/ Defibulator course. The CAS was advised by Sophie that she passed the course and that she acquired a certificate and the certificate was properly submitted as evidence for trial. Sophie also took several more parent courses and an infant stimulation program after Dr. Worenkliens recommendations in he letter of March 1, 2011 and the certificates were submitted for trial. Melanie Rochon was advised verbally and writing that Sophie was taking these courses and infant stimulation program long before Melanie Rochon swore her affidavit that she had no knowledge that Sophie took any

parenting courses besides the infant stimulation program they offered her Sept and Dec 2010. The Doctor had recommended March 1, 2011 that the CAS offer further infant stimulation programming but CAS refused to do so. Sophie has confirmation of this in writing from CAS. And CAS mislead Dr. Worenklien who was charged with making recommendations to the court in this matters of crown wardship at trial. Before trial CAS told Dr. Worenklien that Sophie did not take any parenting courses or infant stimulation as he recommended March 1, 2011. The came out during questioning at trial. The Doctor did not bother to do a follow up assessment as he had recommended and reversed his March 1, 2011 recommendation against crown wardship for a recommendation of crown warship for Anthony. The judge at trial disallowed Sophie's certificates and letters of recommendation from these courses. And he refused to let Sophie recall herself to refute the testimony of Dr. Workenklein even though this was new evidence that she had not been for warned of.

62. After the trial it was still not clear what Sophie was suppose to have done to harm her children. There remained this accusation that she failed to protect her child from Roger Morin and that she might hurt her child because she is in their words mildly intellectually retarded.
63. Sophie applied to the court on September 9, 2011 for orders pertaining to the appeal of the crown wardship decisions for both children. Sophie received all 5 orders requested including one for visitation of her children pending the completion of appeal process because CAS had cut her visits from 3 for her son to 1 and from 4 with her daughter to 1. She is breast-feeding so harm is done and general harm regarding the mother child bond. She got this order for a stay of placement and CAS did not honour it instead returned to court without notice and got all 5 orders stayed. Sophie received notice at 12:00 pm on September 13 that a motion would be heard September 14, 2011. Sophie brought an affidavit refuting the evidence the CAS presented, and a factum and alternative motion if her orders were over turned. CAS sought their motion on the bases that Sophie had not advised the judge that gave her the stay orders that the matters concerned decisions of crown wardship and because Sophie had not given reasons for her motion without notice. These representations of fact were blatantly untrue as Sophie's motion did state that the order of stay was regarding decisions of crown wardship and the motion and affidavits laid out reasons for the order without notice. And the Judge was given the full fill for both children. Justice Roy refused to take Sophie's factum and affidavit or let her respond to the false information presented by CAS and order a stay on her motion.

64. Here is the content of Sophie's motion:

Notice of Motion

The appellant will make a motion to the court (or judge) in writing, or soon after that time as the motion can be heard, at 161 Elgin St. Ottawa Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard (choose appropriate option)

X in writing under subrule 37.12.1 (1) because it is made without notice;

THE MOTION IS FOR:

1. An order for an extension of deadline to prefect appeals without transcripts of the decision for crown wardship of Anthony Normand and Angelina Normand.
2. An order for stay of placement for Anthony Normand involving 3 visits per week of 3 hour duration in my home pending appeal.
3. An order for a stay of placement for Angelina Normand of 3 visits per week of 3-hour duration pending appeal pursuant to rule 63.02 (b)
4. Leave of the court to join these two appeals.
5. An order for disclosure by the respondent for a copy of my CAS file from when I was a crown ward.

THE GROUNDS FOR MOTION ARE:

1. The lawyer for the Children Aid Society of Ottawa, Julie Daoust is away on holidays and is unavailable to advise what transcripts she requires for these appeals. The notice of this vacation was only give to the appellant late evening of September 8, 2011. The motion is made without notice because of the order is required before September 15, 2011.
2. Irreparable harm will be done to the appellant and her children if she is separated from them pending appeal.
3. Irreparable harm will be done to the appellant and her children if she is separated from them pending appeal.
4. The facts and evidence of the case are the same.
5. My own crown ward file is required because the respondent referred to incidences while I was in care in affidavit supporting their application for crown wardship of Anthony Normand and they referred to medical assessment of me while I was in their care as a crown ward in their affidavits supporting their application for crown wardship of Anthony Normand.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

Affidavit of Sophie Normand-Denis dated September 9th, 2011 with two exhibits. Exhibit A letter to Julie Daoust Lawyer for the CAS asking for a statement of what transcripts they require for the appeals if any. Exhibit B a letter from Children's Aid Society of Ottawa, September 8, 2011 indicating that Julie Daloust is on holidays and will not be returning until September 16, 2011 which is past the deadline for perfection of the appeal without transcripts.

September 9, 2011

65. Sophie is now confined to one visit per week with both children together. She visited on September 20, 2011 and arrived with a weeks worth of frozen breast milk. The CAS worker told her that the foster mother did not have any room to store the extra milk so she would have to throw it in the garbage.
66. There is a pamphlet written by Women's Right To Know called *Child Protection and Family Law*. This pamphlet is paid for by the Ontario Government as evidenced by the Ontario government emblem on the back indicating that they funded the pamphlet. On page 7 of the flyer it says: Apprehension at birth: The CAS can take you child at birth if there are significant concerns for your child's safety. In the list of serious concerns it states: "if you are a teen mom, especially if you were ever in the care of the CAS. " This statement offers proof that age is bases of apprehension of infants by CAS which violates both the rights of the mother and the child because it is not reasonable.

SECTION III

The following is the legal basis for the constitutional question:

INTRODUCTION

The purpose of this challenge is to demonstrate that the sections of the Child and Family Services Act dealing with child protection is ultra vires because the province has usurped the Federal Governments constitutionally delineated exclusive authority to make laws in relation to child protection and the enforcement thereof. The Criminal Code, which includes criminal laws and enforcement procedures, has built in protection of the rights and freedoms protected in the Constitutional Act of Canada. The provincial child protection laws and procedures do not have build in

protections for the rights and freedoms guaranteed in our Charter of Rights and Freedoms. Therefore the portions of the Child and Family Services Act that deal with child apprehension and fines for child abuse or neglect is unconstitutional.

The Federal Government has already exercised its constitutionally delineated and exclusive authority to make laws in relation to child protection and enforcement via Federal laws and procedures contained in the Criminal Code of Canada do respect Charter rights in contrast to Provincial child protection laws which inherently violate charter rights. Therefore the sections of the Child and Family Services Act which do not have constitutional authority and under which the rights in the charter of rights and freedoms are violated are unconstitutional.

Federal Child Protection Legislation

Section 91 of the Constitution Act of Canada 1867 gives the Federal government exclusive authority over Criminal Code which includes criminal law, policing procedures related to criminal charges and court guidelines for criminal trials.

The Criminal Code already provides all the necessary laws to protect children from abuse and neglect. (sections 172, 264, 215, 218, 222, 265m 266m 267, 268, 269, 43, 150.1 151, 152, 153, 155, 159, 160, 163, 170, 171, 173(1), 173(2), 179, 212(2), 212(4), 271, 272, 273,. As well, policing guidelines and court procedures are set out in the Criminal Code to make sure that charges under the Criminal Code are enforced in respect of Charter rights and freedoms and these legal guidelines are to ensure that these Criminal Code laws are executed with respect of the Principles of Fundamental Justice.

The following are some of the well established *Principles of Fundamental Justice* protected in the Criminal Code.

Arbitrariness

It is a principle of fundamental justice that laws should not be arbitrary. (*R. v. Malmo-Levine*) That is, the state cannot limit an individual's rights where "it bears no relation to, or is inconsistent with, the objective that lies behind [it]". (*Rodriguez v. British Columbia (Attorney General)*)

Sophie's children were taken from her in hospital without her having done anything to harm or neglect them or fail to protect them.

Vagueness

The "Principles of Fundamental Justice" require laws to have a clear and understandable interpretation so as to properly define the rule or offence.

A law is unconstitutionally vague if it does not have clarity enough to create "legal debate". There must be clarity of *purpose, subject matter, nature, prior judicial interpretation, societal values, and related provisions*. This does not prevent the use of broadly defined terms so long as societal objectives can be gleaned from it. (*Ontario v. Canadian Pacific Ltd.*, 1995)

Sophie's children were taken from her in hospital without her having done anything to harm or neglect them or fail to protect them and the reasons given were vague and constantly changing and no evidence of reasons were ever given.

Overbreadth

The "Principles of Fundamental Justice" require that *means* used to achieve a societal purpose or objective must be reasonably necessary.

This principle is violated when the government, in pursuing a "legitimate objective", uses "means" that unnecessarily and disproportionately interfere with an individual's rights. (*R. v. Heywood*)

The arbitrary removal of Sophie's children with vague unsubstantiated cause violates this principle of fundamental justice.

Right to make full answer and defence

Anyone accused of a criminal charge has the right to know the case against them and put forward a defence. In addition to being a principle of fundamental justice, this right is also protected by the right to a fair trial under section 11(d) of the Charter.

Section 11(d) provides that:

" 11. Any person charged with an offence has the right ...

(d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal; "

This right has generated some case law, as courts have struck down reverse onus clauses as violating the presumption of innocence. This first occurred in *R. v. Oakes* (1986) in respect to the Narcotics Control Act. This was also the case in

which the Court developed the primary test for measuring rights limitations under section 1 of the Charter. The Court found having a reverse onus clause was not rational in fighting narcotics traffic since one could not assume a person found with narcotics means to traffic it. In *R. v. Stone*, the question of automatism was considered, with the Court deciding that while shifting the burden of proof to the defendant was a violation of section 11, it could be justified under section 1 because criminal law presumes willing actions.

The reference to a fair hearing allows one a right to "full answer and defence", a right also based in section 7 of the Charter ("fundamental justice"). This has led to a controversial string of decisions surrounding the rape shield law, starting with *R. v. Seaboyer* (1991) and ending with *R. v. Mills* (1999).

"Full answer and defence" encompasses a number of things, including the right to counsel (also see section 10), the right to examine witnesses, and most importantly, the right to full disclosure by the Crown (see *R. v. Stinchcombe*, 1997).

It is clear that Sophie did not have a fair trial not even close and this right is clearly violated in that all of her evidence was unjustly eliminated by manipulation by the Trial Judge.

Right to silence

In *R. v. Hebert* the court held that the right to silence was a principle of fundamental justice. Statements of the accused cannot be achieved through police trickery and silence cannot be used to make any inference of guilt.

Sophie was continually forced and cajoled to provide information of a personal nature to CAS and CAS violated her privacy without consent on number of occasions with family and community officials.

Federal Authority to make child protection laws

Section 52 (1) "The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect."

Sections 91, 92, 93 and 94 95 of the British North America Act establish guidelines for separating federal and provincial areas of responsibility. In the words of Sir John A. Macdonald, "All matters of general interest are to be dealt with by the general [that is, federal] legislature, while local [or provincial] legislatures will deal with matters of local interest." "General" interests under the act included national defense, foreign policy, criminal law, and the regulation of trade and commerce, while "local" interests included health, municipal government and social services. There is no authority set down for the province

to have jurisdiction over child protection because these are matters of public security which is a Federal responsibility.

The Federal government has established legislation to protect children under the Criminal Code and criminal procedures. Child protection which includes laws prohibiting child neglect, child abuse and failing to protect a child is under Federal jurisdictions because it includes law enforcement and is penal in nature and it is not specified in the Provincial powers. Section 91 provides that any matters not enumerated in the Constitutional under provincial authority defaults to the Federal government. Child protection is not listed as a provincial jurisdiction and does not fall under any jurisdiction of the province.

Under section 91(27) of the *Constitution Act, 1867* (or, at the time of this case, the *British North America Act, 1867*), Parliament receives exclusive powers to legislate in regard to the criminal law. The precise meaning of the criminal law power, however, had proved controversial. In *Board of Commerce* (1922), the JPCPC seemingly chose to define criminal law power as limited to prohibiting only what was criminal in 1867, the year of Canadian Confederation. This was overturned in *Proprietary Articles Trade Assn. v. A.-G. Can.* (1931), in which it was found criminal law means Parliament could legitimately prohibit any act "with penal consequences." The problem with the latter decision was that it gave Parliament an excuse to legislate in regard to many matters.

The matter came before the courts again with the *Margarine Reference*, and a compromise was attempted. In this case, Parliament had legislated against the production and trade of margarine, in order to give dairy businesses assurances that margarine would not threaten their existence. This legislation actually dated back to 1886, and it was claimed in the law that the real purpose was to target a product that was "injurious to health." While this, if true, would have made margarine a fair target for criminal law, the federal government admitted before the courts that this assessment was simply false.

Decision

Justice Rand, for the Majority, struck down the prohibition on production of margarine on the grounds that it was not valid criminal law, the prohibition on importation of margarine, however, was upheld under the federal Trade and Commerce power.

Rand outlined a test to determine if a law falls under the criminal law.

A crime is an act which the law, with appropriate penal sanctions, forbids; but as prohibitions are not enacted in a vacuum, we can properly look for some evil or injurious or undesirable effect upon the public against which the law is directed. That effect may be in relation to social, economic or political interests; and the legislature has had in mind to suppress the evil or the safeguard the interest threatened.

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From this, two requirements must be met for a law to be criminal in nature.

1. the law must be a prohibition with a penal sanction; and
2. the law must be directed towards a public purpose.

Rand also listed a few objectives that would qualify as legitimate public purposes, namely "Public peace, order, security, health, morality."

The JCPC, in upholding Rand's decision, agreed that in pith and substance, the law was primarily related to property and civil rights, a provincial power.

Child protection fully fits this test in that it has to do with public peace, order, security, health and morality.

Provincial Child Protection

1888-Funding of Child Welfare Agencies

In 1874, charitable institutions were permitted by legislation to intervene to prevent the maltreatment of apprenticed children, and a cost-sharing relationship was established between charitable organizations and the province. In 1888, An Act for the Protection and Reformation of Neglected Children allowed the courts to make children wards of institutions and charitable organizations, with local Government assuming the maintenance costs of wards. Foster homes were now encouraged as alternatives to institutions.

When the Criminal Code was used for child protection exclusively children were removed from their parents by court order until charges were complete and afterwards if the parents were found unfit for the children to be returned to them they were placed under the guardianship of individuals or agencies. Before this this time government did not fund agencies that were helping these children.

1891-Beginning of Police powers for CAS

With this new legislation in place, the famous reformer J.J. Kelso helped found the Children's Aid Society of Toronto in 1891, and went on to advocate for the passage of a new Act for the Prevention of Cruelty to and Better Protection of Children in 1893. With this legislation, children's aid societies became, in 1893, semi-public agencies with the legal power to remove children from their homes, supervise and manage children in municipal "shelters" and collect monies from municipalities to cover the maintenance costs for wards. Societies at this time gained the status and prerogatives of legal guardians.

Provincial Child Welfare And Child Protection Legislation

By 2011 the Provincial Government of Ontario has established a succession of acts aimed at child welfare and child protection. And have in so doing started a funding process for child welfare and a policing system for child protection under the same Act. The current piece of legislation in Ontario that covers both child welfare and child protection gives this funding and policing authorities to 58 agencies normally called Children's Aid Societies (hereafter CAS) and is entitled the Child and Family Services Act (hereafter CFSA).

CAS Policing Powers

Under CFSA (Section 40 (1) to (14) the CAS has the right to enter any premise private or otherwise and apprehend a child by force with or without a warrant. This force can be used without police present and the legislation has no guidelines for the use of force by CAS and general police guidelines under the Criminal Code do not apply by default.

The CAS can get a warrant without even specifying the child's name or location indicated that reasonable evidence is not required for the issuance of these warrants as they would be under the Criminal Code.

During the procedure for investigation parents and caregivers are required to give information to the agency, undergo medical examinations that will establish guilt or innocence, which would not be permitted under the Criminal Code because of the right to silence.

Furthermore, section 85 of the CFSA imposes fines for child abuse, child neglect, and failure to protect a child.

In addition, Section 40 (13) further supports the fact that sections of the CFSA usurp Federal jurisdiction in that it grants extra powers of a child protection worker to Police for the purpose of enforcing the CFSA under section 40 as opposed the CFSA giving child protection workers the powers of a Police officer.

And finally, the Provincial Government has allowed these semi private agencies to operate with this degree of power without any provincial oversight. The Ombudsman of Ontario, Andre Marin reports that he has thousands of unanswered complaints over the years about CAS agencies across the province since the province refuses to grant him jurisdiction to oversee CASs. These complaints -- if they relate to abuse of power in the apprehension of children -- could potentially involve criminal malfeasance or kidnapping or worse yet, no investigations are done what so ever.

After the apprehension of a child by a CAS under the CFSA has been initiated, the civil courts decide if the child will be removed permanently from the parent based on a minimal level of proof i.e. balance of probabilities as opposed to the level of beyond a reasonable doubt. There is no obligation on the State to

provide resources to help resolve any problems the parent may have which would help avoid the permanent removal of their children. And the civil court under this legislation may impose further punishment in the form of fines for child abuse or child neglect or failure to protect a child under section 85.(2) CFCA.

Section 7 violations: Life, Liberty and Security of the Person

Child protection proceedings are a dramatic instance of State intervention in the lives of Canadians, and are regulated by the *Charter*. While initially reluctant to recognize the constitutional significance of familial relationships, in the last few years, the courts have accepted that familial relationships are of fundamental societal importance and worthy of constitutional recognition and protection. The 1999 Supreme Court of Canada decisions in *M. v. H.* and *New Brunswick v. G.(J.)* marked a dramatic change in judicial approach. In *G.(J.)* the Supreme Court held that child protection proceedings pose a fundamental threat to the "security of the person" of parents and their children, and hence must be conducted in accordance with "the principles of fundamental justice."

In this case Sophie Normand-Denis, her first child, and second born child were apprehended arbitrarily in hospital. No proof of harm or proof of impending harm to her children were given to Sophie, and no warrant was provided.

Sophie was subject to mistreatment by CAS workers, which included breach of confidence to family members and the foster family and Ontario Works staff and other community members, pressure to permit disclosure of her file to members of the community, requirement to submit to a medical examination for the purpose of establishing guilt. CAS manipulation of the psychological assessment by use of misrepresentations of fact being placed on her CAS file then subsequently used in court. The CAS refused to deal with these matters/complaints as required by section 68 of the CFSA by refusing to form an ICRP (Internal Complaint Review Panel). Sophie complained to the Child and Family Review Board, the Office of the Ombudsman, the Office of the Child Advocate, the municipal and provincial police, the Office of the Coroner, the Mayor of Ottawa at the time, Larry O'Brien, and her MPP Madeleine Meilleur without results.

No government oversight exists to deal with these matters and the trial judge refused to deal with these matters at trial 66+00 even though they were listed by Sophie as issues for trial and there were uncontested at the pretrial hearing.

Throughout the court process Sophie was denied a full defense in that the judge did not consider her evidence in chief that she submitted properly before trial to the court and to the CAS because he invited her on the stand. The judge invited her on the stand without advising this unrepresented respondent that her evidence in chief would no longer be considered by the court if she took the

stand without reentering all of her exhibit evidence and affidavit statements while on the stand. And subsequently the judge refused Sophie to recall herself so she could introduce her exhibits and complete her testimony on the stand. He also refused to allow her to recall other witnesses and he refused one of her witness to testify. Furthermore, several witness that the CAS had stated would be present were not present and the judge would not order CAS to call them even though Sophie had indicated in pretrial documentation that she wanted to cross these witnesses. And Sophie had also requested two CAS witnesses that CAS did not call for her i.e. two access workers. And finally the judge dismissed one of the CAS witnesses before Sophie finished cross examining her.

The judge also refused to order germane disclosure from the CAS and to compel the attendance of a critical witness who was duly served a summons within time limits. And the judge refused to compel Doctor Bradford who was properly summoned and did not show up at trial.

In *R. v. McGibbon*, the Ontario Court of Appeal addressed the issue of the trial judge's general duty to assist in these cases:

Consistent with the duty to ensure that the accused has a fair trial, the trial judge is required within reason to provide assistance to the unrepresented accused, to aid him in the proper conduct of his defense, and to guide him throughout the trial in such a way that his defense is brought out with its full force and effect. How far the trial judge should go in assisting the accused in such matters as the examination and cross-examination of witnesses must of necessity be a matter of discretion.

What she was suppose to have done to endanger the child is still vague to this day even after the trial which resulted in a permanent crown wardship and subsequently a summary judgment leading to a decision of crown wardship of her second child who was apprehended in hospital and no trial was permitted.

What she was suppose to have done to endanger the child is still vague even after the trial which resulted in a permanent crown wardship and subsequently a summary judgment leading to a decision of crown wardship of her second child who was apprehended in hospital and no trial was permitted.

SECTION 15 Violation

Section 15 of the/ Canadian Charter of Rights and Freedoms states:

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

There is a pamphlet written by Women's Right To Know called *Child Protection*

and Family Law. This pamphlet is paid for by the Ontario Government as evidenced by the Ontario government emblem on the back indicating that they funded the pamphlet. And this pamphlet is distributed at the Ottawa Court House at the Family Court Clinic. On page 7 of the flyer it says: Apprehension at birth: The CAS can take your child at birth if there are significant concerns for your child's safety. In the list of serious concerns it states: "if you are a teen mom, especially if you were ever in the care of the CAS. " This statement offers proof that age is bases of apprehension of infants by CAS which violates both the rights of the mother and the child because it is not reasonable. And it does not make it any more reasonable if the mother was once a ward of the CAS themselves.

This is both discrimination on the basis of age and family status by the Province of Ontario and the Children's Aid Society of Ottawa in that they intervened based on her age, and based on the fact that she was a Ward of the Crown.

Charter Rights and Freedoms Violated

The province of Ontario usurping Federal power to create child protection laws have created a child protection process that violates:

1. 11 d of the charter
2. section 7 of the charter
3. section 15 of the charter

In this case all of these rights of Sophie and her children are clearly violated in the state action of permanently removing the children from their mother[And these violations were made possible because the state was executing child protection under provincial statues giving a semi private agencies CAS's policing powers without procedural protection for charter rights such as those found in the Federal Criminal Code. This loss of rights is made possible by the state neglecting to provide safeguards to protect charter rights in the enabling legislation CFSA. The system under this legislation has not provided for regulating of policing authority of the CAS and has provided litigation of child protection matters in civil court where the CAS is the police, plaintiff and prosecutor and is also the beneficiary of a judgment against the parent.

CIVIL VERSUS CRIMINAL COURT

Civil Law and Criminal Law are two broad categories of law with distinct differences.

Civil Law determines private rights and liabilities, whereas **Criminal Law** concerns offenses against the authority of the state.

Litigation is simply another term for a *lawsuit*, which is a dispute between two or more parties regarding civil or criminal law issues. Civil law involves disputes between private parties and defines legal rights and obligations between them. Civil litigation is the process of resolving private disputes through the court system. Unless the parties privately resolve their dispute, the litigation usually results in a trial, or hearing, where the parties present their evidence to a judge or jury. The judge or jury then decides the dispute.

Not all cases that involve litigation are considered civil litigation. Our court system is designed to handle both civil and criminal cases. Criminal law defines conduct prohibited by legislative bodies, which also prescribes the punishments for violations and the police and court procedures to be followed.

Parties in Civil Litigation and Criminal Actions

The parties to a civil lawsuit include the *plaintiff*, the *defendant*, and possibly *third parties*.

The **plaintiff** is the party that has allegedly suffered some legal wrong at the hands of the **defendant**, the party responsible for infringing upon the *plaintiff's* rights. The *plaintiff* files a lawsuit against the *defendant*, using the courts as the forum to argue that the defendant should be held responsible for the *plaintiff's* injuries and should compensate the *plaintiff* for its losses.

The parties in a criminal lawsuit are different from those in a civil action. In criminal cases, the public, through the authority of the Federal Criminal Code Canada brings the accused criminal (the defendant) to court to determine his or her guilt or innocence. Of course, masses of citizens do not actually haul *defendants* bodily into the courtroom. Instead, the government provides the special officer, called the *prosecutor* who files criminal charges against the *defendant* on the public's behalf. This individual would be called the Crown Attorney.

Criminal lawsuits differ from their civil counterparts in that criminal prosecutions are intended to convict and punish the criminal offender, whereas civil lawsuits are designed to settle disputes between private parties. In criminal actions, the convicted *defendant* may be punished by imprisonment, or fined by the government. In civil suits, however, the *defendant* who losses judgment to the *plaintiff*, must compensate the *plaintiff* directly.

Civil and Criminal Procedure

Civil litigation, which deals with private disputes between parties, is subject to the rules of civil litigation, sometimes referred to as **civil procedure**. Criminal cases, which deal with acts that are offenses against society as a whole, such as murder and robbery, are subject to the rules for criminal law, which are also known as the rules of **criminal procedure**.

Sometimes the same act results in both a civil and a criminal action. For example, suppose that Ann Smith drives her car while under the influence of alcohol. As a result, she crushes into another vehicle and injures the driver of that car, John Watson. Ann Smith would be arrested for the crime of drunk driving, but John Watson might also sue civilly. The civil case (*Watson vs. Smith*) will proceed according to the rules of civil procedure.

The criminal case, the government (in this case the state) would file an action against Ann Smith for the crime of drunk driving. If she were found guilty, the court could sentence her to jail or impose a fine payable to the state. In the civil case, John Watson would sue Ann Smith for money to compensate him for his medical bills, his lost wages, and his pain and suffering.

Although, the same act may spawn both a civil and a criminal case, the two legal cases are always kept separate. They will never be tried together. In part, this is because a different standard or **burden of proof** is required in criminal case. The standard of evidence used to judge the criminal case is higher than the standard applied in civil cases.

Burden of Proof in Civil and Criminal Law

Civil and criminal law may be further distinguished in terms of burdens of proof. In a civil lawsuit, the plaintiff's case must be proved by a **balance of probabilities or preponderance of the evidence**, meaning that the plaintiff must convince the judge or jury that his or her version of the facts is more likely than not and that he or she is entitled to judgment. This degree of proof is sometimes called presenting a **prima facie case**, or "crossing the 51 percent line", because the plaintiff must out prove the defendant by more than half the evidence.

In certain cases, such as those involving fraud, misrepresentation, intentional infliction of emotional distress, and probate contests, the plaintiff must prove his or her case by **clear and convincing evidence**, which is a higher standard and more difficult to meet than a mere preponderance.

By contrast, in a criminal lawsuit the prosecutor must prove the case **beyond a reasonable doubt**. This means that judge or jury must believe the defendant's guilt without significant reservations. This burden of proof is much more difficult than either of the proof levels required in civil cases. This heavier burden on the government exists to protect defendants from overzealous prosecutors who might succeed in convicting innocent individuals with less evidence if the proof requirements were easier to satisfy.

The Child and Family Service Act has allowed the child protection process to be litigated under the civil courts that eliminating all the protection of charter rights protected by the Criminal Code related to policing of child protection and prosecution of child abuse and neglect.

CONCLUSION

The CFSA that has allowed semi private agencies CAS to acquire policing powers with no regulatory control as well as the authority to be plaintiff, prosecutor and potentially beneficiary in child protection litigation needs to be revamped.

The Criminal Code provides all the necessary power to protect children and the province has the constitutional authority to fund child welfare programs that can help meet the needs of the children who are need of protection.

In order to correct these violations of charter rights which have occurred to Sophie Normand-Denis and her children and anyone else who deals with the Children's Aid Societies of Ontario the current sections of the Child and Family Services Act that deal with apprehension of children and fines for child abuse and neglect must be struck down as unconstitutional and therefore no force or effect of law. And Sophie and her children Anthony and Angelina need a fair trial of the facts.

SECTION IV

REMEDY SOUGHT

An order under section 24 (1) of the Charter of Rights and Freedoms for the sections of the Child and Family Services Act which deal with apprehension of children for neglect, abuse or failing to protect from abuse be declared as unconstitutional and be struck down as having no force or effect in accordance with Section 52 of the Charter because they violate section 91 to 101 of the Constitution Act of Canada and therefore section 11 (d), 7 and 15 of the Charter of Rights and Freedoms.

An order under section 24 (1) of the Charter of Rights and Freedoms for the sections of the Child and Family Services Act which deal with fines for child for neglect, abuse or failing to protect from abuse be declared as unconstitutional and be struck down as having no force or effect in accordance with Section 52 of the Charter because they violate section 91 to 101 of the Constitution Act of Canada and therefore section 11 (d), 7 and 15 of the Charter of Rights and Freedoms .

An order to have the matters of CAS accusations towards Sophie Normand-Denis of child abuse and child neglect and failure to protect retried in criminal court. The reason for retrial in criminal court is because the accusations would have to be clear, the court would have to follow the court procedures for criminal matters which respect the principals of fundamental justice and therefore Charter rights.

Alternatively if the court does not deem the aforementioned sections of the Child and Family Services Act unconstitutional then an order for a retrial in the Superior Court of Justice because the decisions were the result of violations of fundamental justice which violate section 11 of the Charter which protects Canadian citizen's right to be presumed innocent (d) section 7 of the Charter which protects Canadian citizen's right to security of the person, and/or section 15 of the Charter which protects Canadian citizen's from discrimination based on age or family status.

An order staying the decisions to place Anthony Normand and Angelina Normand as permanent Crown wards without access until the outcome of the Charter challenge, and a retrial in Criminal Court or Civil court.

Any other Orders this honourable court deems appropriate and just in the circumstances.

September 29, 2011

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(This notice must be served as soon as the circumstances requiring it become known and, in any event, at least 15 days before the question is to be argued, unless the court orders otherwise.)